

10/20/03
**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GUIDELINES FOR ATTORNEYS
TAXATION OF COURT COSTS IN THE
SOUTHERN DISTRICT OF OHIO

The purpose of these guidelines are to explain the standard and customary practices of the Clerk's Office of the United States District Court for the Southern District of Ohio concerning items of costs not otherwise allowed or prohibited by statute or by specific order.

By custom, practice and local rule, the Clerk delays taxing costs until after the judgment has become final (either by virtue of a judgment having been entered and the time for taking an appeal having expired with no appeal being taken, or after judgment has been rendered by the Court of Appeals.)

SOUTHERN DISTRICT OF OHIO LOCAL RULE 54.1 TAXATION OF COSTS

- (a) Timeliness.** Unless otherwise ordered, taxation of costs shall not occur until a final judgment in favor of a party entitled to an award of costs has been entered by the Court. The bill of costs is to be served and filed within fourteen (14) days after the date such judgment becomes final, which ordinarily is the date on which any timely appeal should have been noticed, if one is not taken, or is the date on which the judgment is final after all appeals.
- (b) Procedure.** A bill of costs shall be prepared on forms approved by and available from the Clerk, or on a pleading which is substantially similar. The bill of costs shall be verified by the trial attorney submitting it, who shall certify that the costs listed were actually incurred. "Guidelines" for the taxation of costs are available from the clerk, and may be consulted for information on the practices customarily followed in this Court; but such guidelines are not to be considered controlling law. Service of the bill of costs shall include the certificate required by Rule 5.2 of these Rules. Costs shall be taxed by the Clerk not less than ten (10) days after service of the bill of costs.

Rule 54(d) of the Federal Rules of Civil Procedure provide that costs shall be allowed to the prevailing party, except when expressly prohibited either by statute of the United States or in the Federal Rules of Civil Procedure, unless the Court otherwise directs. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice.

In practice, counsel are given a briefing schedule to file memorandum contra and a reply memo in support of the Bill of Costs. It has become the customary practice by the Clerk to rule upon the filed pleadings rather than hold a hearing. If a hearing is requested by the parties, the Clerk encourages the use of teleconferencing for the taxation hearing as a means of reducing costs to the litigants.

The Sixth Circuit hold that Rule 54(d) creates a presumption in favor of awarding costs, but allows denial of costs at the discretion of the trial court. **White & White vs. American Hospital Supply Corp.** 786 F2nd, 730 (6th Cir March 25, 1986). The appellate court, also, noted that the District Court should consider only the necessity, not the reasonableness, of the prevailing party's costs. **Id.** At 732.

A motion to review the Clerk's Taxation of Costs must be filed within five days after the taxation as provided in Rule 54(d)

These "Guidelines" will follow the format of the AO 133 Bill of Costs form.

AO 133 (Rev. 9/89) Bill of Costs:

Fees of the Clerk

The fees of the Clerk may be found in Title 28 USC 1914, 1917, 1920 & FRAP 39(e):

The following are **TAXABLE**

1. Filing fee of complaint (\$150.00)
2. Filing fee of notice of appeal (\$105.00)
3. Filing fee of removal action from state court (\$150.00)
4. Filing fee for Application for Writ of Habeas Corpus (\$5.00)
5. Costs for preparation of record on appeal
6. Filing fee in cases instituted by the United States allows the \$150.00 filing fee for a civil action in District Court to be taxed as costs when the United States prevails in an action which it has brought. See subsection 2412(a)(2) of Title 28

Fees for service of summons and subpoena

The fees of the U. S. Marshal and Private Process Service may be found in Title 28 USC 1921

The following are **TAXABLE**

1. Reasonable cost of service is taxable if the defendant fails to comply with the custom and practice of the Court of service of process by Notice and Waiver of Summons.
2. Expenses of caring for attached property, etc. (Actual amount incurred, not necessarily the amount of the required deposit.
3. Sales commission (for disposing of attached property)
4. Insurance premiums for indemnity of marshal required for maritime attachments.

The following are **NOT TAXABLE**

1. Service fees for deposition subpoena
2. Service fees for discovery subpoena

Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case

The practice of this Court is to require **prior court approval** before the costs of a transcript can be taxed by the Clerk as costs. The exception to this practice is provided by FRAP 39(e)(2) **the reporter's transcript, if needed to determine the appeal**, the District Court may tax the costs of such transcript(s) for the prevailing party.

The following are **TAXABLE. The transcript must be on file with the Clerk.**

1. If the Court determines that the transcript was necessary for use at trial or rendering the decision.
2. Daily Copy if the court approves prior to trial. Daily Copy (when taxable) is taxed at the ordinary rate unless there is advanced determination by the court that it is to be taxed, or if there is an agreement of parties to the taxing.
3. At the trial, prior to incurring expense, the court determines that it is necessary.
4. If the forma pauperis party prevails, and the United States paid for the transcript, it is taxed in favor of the United States.
5. Prepared pursuant to stipulation of parties with agreement to tax as costs.

The following are **NOT TAXABLE**

1. Cost of Copies
2. Cost of daily copy only for the convenience of counsel. When there is no appeal, the transcript is rarely taxed unless necessity is shown, because of the facts and complexity of a particular controversy.

Fees and disbursements for printing

These matters are not usually involved in trial court proceedings. They are normally taxed by the United States Court of Appeals and allowance being added to costs recoverable in the trial court (28 USC 1923 (c) superseded by FRAP 39(c).)

Fees of Witnesses (itemization must be made on the reverse side of the AO133 - Attendance fee, subsistence, mileage)

Fees provided by statute at the rate in effect when the witness appeared.

No distinction is made between fact and expert witnesses, except when expenses are incurred in the calling of expert witnesses. (The general principle applicable is that only the regular statutory fees and allowances are taxable, however, excessive fees and expenses paid to such witnesses are **allowable only in exceptional cases where dominating reasons of injustice compel the allowance**. Such allowance required a prior approval of the Court, or that the person be designated an expert by the court.)

Federal Courts are bound by the \$40.00 per lay limit set forth in 28 USC 1821 when taxing the prevailing litigants expert witness fee as costs against a losing party, absent a contractual arrangement or explicit statutory authority to the contrary.

Absent a prior ruling by the Court, the Clerk is unable to determine the reasonableness of an expert witness fee through the taxation costs process. Without prior determination of reasonableness, the Clerk will tax expert witness fees at the statutory rate. The denied portion of the expert fee would be matter for a motion to retax before the Court. No expert witness fee will be taxed where the expert does not testify.

Witness Fees (computation, cf. 28 USC 1821 for statutory fees) - page 2

Fees: (see attachment “Mileage Rates/Subsistence Rates”

1. Attendance Fee \$40.00 for each day necessary in attendance and in going to and returning from place of attendance.
2. Travel. The 100 mile rule applies in the Court except when travel within the district exceeds a 100 mile radius. Witnesses residing outside of the district and living in excess of 100 miles will be paid at the point of entry into the district or for 100 miles, whichever is greater. When subsistence is allowed, only one round trip is allowed, unless the Court adjourns for a weekend or for some other reason, such as emergencies, illness, or weather
 - A. By car, round trip mileage allowed at 36 cents per mile (1/01/03)
 - B. Common carrier - Actual expenses (at coach far rates) paid to and from witnesses residence by shortest rule (note 100 mile rule)
3. Miscellaneous Allowances - Toll charges, bridges, ferries, taxicabs between place of lodging and carrier terminals and parking fees.

4. Subsistence Allowances - subsistence is allowed for witnesses who live too far to be expected to travel to and from their residence daily while in attendance. When the hearing or trial begins at 9:30 a.m. or earlier, subsistence the evening before is allowed. When the witness is released late in the day, the subsistence for the evening of the day the witness testifies is allowed.
 - A. See "Mileage/Subsistence Rates" attachment
 - B. Actual costs not to exceed designated high cost area maximums. High cost area claims require receipts for lodging and, when practicable, other items of subsistence (other than meals) which are in excess of \$10.00
5. Limitation of Taxation - Real parties in interest or parties sued in a representative capacity are not entitled to fees or allowances as witnesses. An officer or employee of a corporation may be treated as an ordinary witness, as long as, he is not identifiable as a real party in interest. As a general rule, compensation paid to expert witnesses in excess of the statutory attendance, fee, mileage and subsistence allowances is not taxable.
6. Witnesses that are summoned but do not testify are not taxed as costs, except where counsel can provide that the witnesses attendance was necessary or where the witness is at court ready to testify, but some change in the trial made the testimony unnecessary.

Fees for exemplification and copies of papers necessarily obtained for use in the case

In respect to such papers, the essential criteria is, necessity, those documents which are received as evidence of fact are usually taxable as costs. In order to have the documents and/or other items serving as visual aids taxed as costs, the items must have been used at trial or so ordered prepared for the convenience of the Court. Court approval may be included in the Pretrial Order or other orders of the Court.

Document necessarily filed in the case are generally considered attorney work product and fees claimed for copies thereof, are not taxable without prior order of Court.

Models - in the absence of Court rule, order or stipulation, models are not deemed taxable, even when introduced as evidence.

Docket fees under 28 U.S.C. 1923(a) (Including the taxation of a deposition)

Attorney's and proctor's docket fees in courts of the United States may be taxed as costs as follows:

- \$20** on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than \$50 the proctor's docket fee shall be \$10;
- \$20** in admiralty appeals involving not over \$1,000;
- \$50** in admiralty appeals involving more than \$1,000;
- \$100** in admiralty appeals involving more than \$5,000;
- \$5** on discontinuance of a civil action;
- \$5** on motion for judgment and other proceedings on recognizance;
- \$2.50** for each deposition admitted into evidence

The Court may assess the costs of taking a deposition in favor of the prevailing party.

It is the policy of this court to tax costs on depositions used and read into the record at a hearing or at trial. This is by means of direct, indirect, impeachment or rebuttal testimony. The expense of reproducing exhibits to a deposition and notary fees incurred in its taking are taxable costs. It is the policy of this court to tax costs on depositions that were used in successful motions for summary judgments, motions to dismiss, and motions to quash.

The Sixth Circuit Court of Appeals, has found that a deposition does not have to be used as evidence to be taxed as an expense. "When a deposition is not actually used at trial or as evidence on some successful preliminary motion, whether its cost may be taxed generally is determined by deciding if the deposition reasonably seemed necessary at the time it was taken." Thus making the reasonableness of the denied deposition a matter for a motion to retax before the Court.

Costs as shown on Mandate of Court of Appeals - taxed as shown on the Mandate

Compensation of court-appointed experts - over the statutory limit as provided by direct Order of Court

Compensation of interpreters and costs of special interpretation services under 28USC 1828

Where an interpreter is appointed, his compensation is set forth by statute as to his qualification (Certified and Professional Qualified Interpreter or Language Skilled (Non-Certified Interpreter). The Court may direct that such compensation be paid by one or more of the parties and such compensation may be taxed ultimately as cost, at the discretion of the Court.

Other costs:

- | | |
|----------------|---|
| Bond Premiums: | Supersedeas Bond-Premium paid to supply supersedeas bond or other bonds to preserve rights pending appeal shall be taxed in th district court as costs of the appeal |
| Attorney Fees: | With the exception of the docket fee, the statutory definition of the term costs does not include Attorney Fees except as expressly stated by statute. Attorney fees are determined by the Court. |
| Jury Fees: | Jury Fees are taxed only by the Court |

All of the above information on costs are subject to Court Order

Additional Information:

If a hearing is desired and scheduled and no one appears, the Clerk will strike any erroneous costs and will refrain from adding any items of costs not previously requested by the party submitting the Bill of Costs.

If a case is settled before or during trial, costs **will not be taxed**. Counsel in preparing a settlement demand should include all of his costs in the settlement agreement.

When the matter of taxing costs has been resolved by counsel after the Bill of Costs has been briefed or after a hearing date has been set, the Clerk's Office is to be so advised as soon as practical.

The following tables reflect mileage rates, subsistence rates and effective dates as set by the director of the Administrative Office:

| MILEAGE RATES | | | |
|---------------|--------|----------|--------|
| Date: | Cents: | Date: | Cents: |
| 01-01-95 | 30 | 01-21-02 | 36.5 |
| 06-07-96 | 31 | 01-01-03 | 36 |
| 09-08-98 | 32.5 | | |
| 04-01-99 | 31 | | |
| 01-14-00 | 32.5 | | |
| 01-22-01 | 34.5 | | |

| PER DIEM RATES | | | | |
|----------------|------------|----------|------------------------------------|---------------|
| Date: | Cincinnati | Columbus | Dayton | MI&E Rate |
| 01-01-95 | 98.00 | 103.00 | 93.00 | 34.00 |
| 04-01-96 | 99.00 | 100.00 | 93.00 | 34.00 |
| 01-01-97 | 100.00 | 104.00 | 97.00 | 38.00 |
| 01-01-98 | 110.00 | 115.00 | 104.00 | 38.00 |
| 01-01-99 | 115.00 | 108.00 | 92.00 | 38.00 |
| 01-01-00 | 115.00 | 113.00 | 85.00* *Conus, Standard Rate | 38.00 |
| | | | | Judges: 46.00 |
| 10-01-00 | 115.00 | 113.00 | 95.00 | 38.00 |
| | | | | Judges: 46.00 |
| 10-01-01 | 115.00 | 113.00 | 95.00 | 38.00 |
| | | | | Judges: 46.00 |
| 10-01-02 | 119.00 | 117.00 | 99.00 | 38.00 |
| | | | | Judges: 46.00 |

| | | | | |
|----------|--------|--------|--------|---------------|
| 06-20-03 | 130.00 | 117.00 | 99.00 | 38.00 |
| | | | | Judges: 46.00 |
| 10-20-03 | 131.00 | 118.00 | 107.00 | 38.00 |
| | | | | Judges: 46.00 |

(Maximum Per Diem Rate for Judges is \$376.00)